

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Application by BellSouth Corp.,)
BellSouth Telecommunications, Inc.,) CC Docket No. 97-231
and BellSouth Long Distance, Inc. for)
Provision of In-Region, InterLATA)
Services in Louisiana)

**REPLY COMMENTS OF THE ASSOCIATION FOR
LOCAL TELECOMMUNICATIONS SERVICES**

Pursuant to the Public Notice issued November 6, 1997
(DA 97-2330), the Association for Local Telecommunications
Services ("ALTS") hereby files its Reply Comments in the above
proceeding.

SUMMARY

BellSouth has gone to great lengths to generate hoopla over
its Section 271 applications for South Carolina and Louisiana,
even enlisting the help of Santa Claus in full-page newspaper
ads. But DOJ's emphatic rejection of its Louisiana application,
along with the Department's earlier turndown of BellSouth's South
Carolina proposal, makes it clear that -- to modify and apply an
old adage to BellSouth's claims -- "where there's smoke, there's
mirrors."

DOJ's autopsy on BellSouth's Louisiana application neatly
demonstrates why BellSouth and the other RBOCs should not be

allowed to swerve off the Section 271 "roadmap" provided by the Commission's Ameritech-Michigan Order.¹ Joining the states in BellSouth's Region that have already rejected BellSouth's requests for interLATA authority, DOJ's opposition details the many ways in which BellSouth's application departs from the Ameritech-Michigan Order:

- DOJ shares the concern of several states that BellSouth has failed to show its OSS systems provide the: "adequate, nondiscriminatory access ... that will be critical to competitors' ability to obtain and use unbundled elements and resold services" pursuant to the Ameritech-Michigan Order (DOJ's SC Evaluation at 4). In particular, DOJ notes that BellSouth has failed to institute performance measurements, failed to provide "access to the basic functionalities at parity with its own systems," and failed to provide stress testing to establish operational readiness (Louisiana Evaluation at 19-20).
- While DOJ believes that Louisiana's interconnection pricing standard properly reflects the requirements of Section 271, it concludes that: "... the lack of any plan for a geographic deaveraging of local loop prices over time or any adequate showing of cost-based prices for collocation preclude us from determining that the pricing structure in Louisiana will facilitate efficient and effective competitive entry" (id. at 23).
- DOJ agrees that BellSouth has failed to provide indicators of wholesale performance as required by the Ameritech-Michigan Order: "to effectively address a post-entry 'backsliding' from prior performance through contractual, regulatory, or antitrust remedies" (id. at 31).

¹ Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137 (FCC 97-298, order released August 19, 1997).

If the new Commission were to disregard these sound conclusions, and permit relitigation of issues settled in the Ameritech-Michigan Order -- matters accepted both by Ameritech, however grudgingly, and by the CLEC community, which did not share that Order's interpretation of Track A -- then every RBOC will toss the roadmap in the wastebasket, and start demanding its own custom-tailored approach.

The new Commission should spare itself the pointless consumption of legal resources such relitigation would entail -- and also the heavy-handed tactics the RBOCs would adopt if they sensed any opportunity for re-opening settled matters. The Commission got the roadmap right in its Ameritech-Michigan Order, and the only sensible approach now is to start the RBOCs marching down the road.

I. THE COMMISSION SHOULD CONCLUDE THAT PCS PROVIDERS DO NOT QUALIFY AS TRACK A COMPETITORS BASED ON DOJ'S CONCLUSION THAT PCS IS NOT A CLOSE SUBSTITUTE FOR POTS SERVICE.

Perhaps the only novel aspect of BellSouth's Louisiana petition is BellSouth's claim that the existence of PCS providers in Louisiana should permit it to proceed under Track A (Section 271(c)(1)(A)). This contention is critical to BellSouth's overall application, because BellSouth cannot proceed under Track B.

Concerning the availability of Track B, DOJ correctly notes

there is only meager competition in Louisiana's local markets today. No carrier has alleged, nor does ALTS contend, that facilities-based competition currently exists in Louisiana's residential local exchange markets.² But, as the Commission recognized in its SBC-Oklahoma Order,³ the current absence of a qualifying Track A new entrant does not necessarily absolve an RBOC from Track A compliance. The Commission recognized in the SBC-Oklahoma Order that it must make a predictive judgment about the likelihood of facilities-based residential and business competition in the foreseeable future (Order at ¶¶ 27-30). This means that BellSouth cannot proceed under Track B in the present proceeding because ACSI and KMC are close to qualifying as facilities-based providers, a fact acknowledged by BellSouth (DOJ Evaluation at 5, n.3 (citing to Affidavit of Gary M. Wright ¶¶ 35, 41))).

² The absence of any BellSouth line losses to competitors in Louisiana is highly ironic given BellSouth's repeated emphasis on such losses in its public statements (see, e.g., BellSouth's press release dated November 5, 1997, entitled "BellSouth Asks Congress to Aggressively Oversee Implementation of 1996 Telecom Act"). In any event, the 215,000 lines BellSouth claims to have lost to competitors, assuming the figure is correct, is less than 1% of its more than 22 million lines (see BellSouth's Second Quarter Highlights).

³ In the Matter of Application by SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Oklahoma, CC Docket No. 97-121, Order released June 26, 1997.

As for Track A, DOJ declined to offer any judgment on the issue of whether PCS providers can qualify as Track A new entrants, preferring instead to offer the Commission its views on the substitutability of PCS service for POTS, and thus permitting the Commission to exercise its discretion under Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984) to settle this issue of statutory interpretation. However, DOJ's conclusion that there is little substitutability between PCS and POTS ("... we offer our assessment that PCS and wireline service are not currently close substitutes in Louisiana from an antitrust perspective ..."; Evaluation at 7) makes the Commission's choice simple.

The phrase Congress used to describe qualifying Track A competitors in Section 271(c)(1)(A) is "competing providers" of local telephone service. Treating PCS providers as Track A competitors would drain any meaning from Congress' use of the term "competing," given DOJ's accurate assessment that PCS and wireline service are currently not close substitutes.

Furthermore, Track A is clearly Congress' preferred method for RBOC entry into the in-region interLATA market. The Commission should be particularly careful not to erode the intent of Track A by broadening the scope of potential competitors

beyond the limits Congress plainly intended.⁴ Just as DOJ has cautioned with regard to OSS compliance, if BellSouth were free to enter long distance through Track B in Louisiana, it would have little or no incentive to implement interconnection arrangements with facilities-based providers.

Accordingly, the Commission should find that PCS providers do not qualify as Track A new entrants, and also conclude that BellSouth is not permitted to proceed under Track B given the progress of ACSI and KMC toward Track A qualification.

II. THE DEPARTMENT OF JUSTICE'S EVALUATION IS CONSISTENT WITH THE EVIDENCE AND CONCLUSIONS OF OTHER STATE PUCS.

The Department's evaluation of BellSouth's SGAT in Louisiana largely parallels its earlier evaluation of BellSouth's similar SGAT in South Carolina. DOJ's current evaluation is also consistent with, and implicitly supported by, other State Commissions and staffs (with the exceptions of the Louisiana and South Carolina Commissions, and the North Carolina Staff), and the South Carolina Consumer Advocate, which have examined BellSouth's Statements of Generally Available Terms and Conditions or its general compliance with the requirements of Section 271. They have all concluded that BellSouth has not

⁴ As the South Carolina Consumer advocate noted in the South Carolina proceeding: "[w]hile . . . local competition is not progressing as fast as it should, this is not a reasonable or permissible basis for the Commission to grant BellSouth's request in this case." CASSC Comments at 3.

complied with the standards and requirements of Sections 251 and 271.

As DOJ noted in its Louisiana evaluation, the wholesale support processes used for CLECs throughout the BellSouth region are very similar, and have been found inadequate in other state reviews, such as Florida's.⁵ Indeed, every body that has looked at the issue (except for South Carolina, Louisiana, and the North Carolina staff) has found that BellSouth does not currently provide the adequate, nondiscriminatory access to its Operational Support Systems ("OSS") necessary to allow competitors to obtain nondiscriminatory access to unbundled network elements ("UNEs") or resold services.

Second, DOJ's conclusion that aspects of BellSouth's SGAT failed to properly reflect future-oriented costing is supported by a number of states which have found that BellSouth has failed to show that the rates it proposes for various elements and services are cost-based as required by Section 252 of the Act. While ALTS agrees with these commissions that there are additional areas in which BellSouth compliance has not been demonstrated, the two areas of wholesale support processes and costing are so significant that they individually require Section

⁵ " ... BellSouth's OSS are operated on a regional, rather than a state-by-state, basis, and other state commissions in BellSouth's region have concluded that the same systems approved by the LPSC were insufficient." (DOJ Evaluation at 19.)

271 dismissal.

The Alabama Public Service Commission - The Alabama Public Service Commission, in an order released after formal hearings, held it was unable to find that the SGAT filed in that state satisfied the requirements of either Section 251 or 271. The Commission concluded that "BellSouth's OSS interfaces must be further revised to provide nondiscriminatory access to BellSouth's OSS systems as required by § 251(c)(3)".⁶ The Commission concluded that it was necessary to institute a further proceeding before approving any OSS systems.⁷ The Alabama Commission also found that BellSouth's proposed rates had not been demonstrated to be cost-based.

The Georgia Public Service Commission - More recently the Georgia Public Service Commission found that BellSouth has not satisfied the requirements of Sections 251 and 271 with respect to the availability of operational support systems (Order released October 29, 1997).⁸ While the Georgia Commission did

⁶ In re Petition for Approval of a Statement of Generally Available Terms and Conditions, Docket 25835, p. 7 (Alabama Public Utilities Commission, released October 16, 1997)

⁷ BellSouth did not object to further proceedings on OSS issues in Alabama. Id. at 8.

⁸ In re BellSouth Telecommunications, Inc.'s Revised Statement of Generally Available Terms and Conditions Under Section 252(f) of the Telecommunications Act of 1996, at 1 (Georgia PSC, October 29, 1997).

allow the SGAT to go into effect so that CLECs could obtain elements and services pursuant to the SGAT if they so desired, the Commission specifically stated that its determination was limited to whether the SGAT should be allowed to go into effect, and did not address issues relating to Section 271 compliance. Because the Georgia Commission had recently completed its costing docket, it allowed the SGAT to become effective pursuant to the Commission's requirements in the costing docket. Nonetheless, it also noted a number of issues that still were open, including the collocation pricing arrangements.

The Florida Public Service Commission - The Florida Public Service Commission staff has recommended that the full Commission find that: "BellSouth has not demonstrated that it has provided access to Operations Support Systems functions in essentially the same time and manner as it does for itself."⁹ Accordingly, staff could not conclude that the rates were cost-based as required by Section 251. On November 4, 1997, the full Commission also concluded that BellSouth's request should be rejected, and issued its written decision on November 16, 1997.¹⁰

⁹ Consideration of BellSouth Telecommunications Inc.'s entry into interLATA Services pursuant to Section 271 of the Federal Telecommunications Act of 1996, Docket No. 960786.

¹⁰ Id., Order No. PSC-97-1459-FOF-TL, issued November 19, 1997, at 173-76.

The Consumer Advocate for the State of South Carolina

("CASSC") - The CASSC filed comments in the South Carolina proceeding consistent with the findings of the state commissions discussed above. Perhaps more importantly, considering the statutory purpose of the Consumer Advocate, is its conclusion that "BellSouth's entry into the interLATA market is not in the public interest at this time." (Consumer Advocate Comments at 7 (emphasis added).)

DOJ's South Carolina Evaluation - Finally, as noted above, the South Carolina Evaluation of the United States Department of Justice is in accord with the state determinations noted above, the Consumer Advocate for North Carolina, and DOJ's current evaluation. In particular, the Department of Justice found with respect to operational support systems that the BellSouth application falls: "well short of satisfying the standards articulated by the FCC" in the Ameritech-Michigan Order (DOJ SC Evaluation at 27). In addition, the Department concluded that BellSouth has not "demonstrated that its current prices are, and future prices will be, supported by a reasoned application of an appropriate methodology." (DOJ SC Evaluation at 34.)

Concerning the present application, while DOJ believes that Louisiana's interconnection pricing standard properly reflects the requirements of Section 271, DOJ concludes that: " ... the lack of any plan for a geographic deaveraging of local loop prices

over time or any adequate showing of cost-based prices for collocation preclude us from determining that the pricing structure in Louisiana will facilitate efficient and effective competitive entry" (Evaluation at 23). Indeed, even if an adequate plan were to exist (and DOJ is correct in noting its absence), BellSouth would not be entitled to file its application until that deaveraging plan is carried out.

* * *

The Commission should not, and cannot, disregard the manner in which the findings and opinions of these bodies support DOJ's current conclusions. While the state commissions in South Carolina and Louisiana have come to different conclusions on these major issues, the Commission should weigh them in the light of the majority of state forums that have commented on BellSouth's compliance efforts -- SGATs, interconnection processes, and pricing decisions that are largely uniform across BellSouth's region.

**III. THE CONCLUSIONS OF THE LOUISIANA PSC SUPPORTING
BELLSOUTH'S § 271 APPLICATION ARE UNFOUNDED.**

While the Department of Justice did agree with the Louisiana Public Service Commission on some matters concerning BellSouth's Section 271 application for Louisiana -- for example, the LPSC's adoption of a forward looking economic cost standard for interconnection prices -- DOJ found the LPSC's conclusions on

such important issues as OSS: " ... to be unpersuasive for several reasons" (Evaluation at 18). DOJ noted that the LPSC did not apply the Commission's requirements for OSS compliance, articulate its own analysis, or base its conclusion on any conventional process for software validation, but rather a one-day technical demonstration (id. at 18-19).

DOJ is correct in not relying upon the LPSC's conclusions concerning OSS. While the LPSC notes that the OSS issue was: "... perhaps the single most hotly contested aspect of the LPSC's 271 proceeding," it does not even acknowledge, much less address, the fact that the Louisiana ALJ made several findings as to the inadequacy of BellSouth's OSS.¹¹ The Department of Justice and the Commission are clearly not obligated to defer to the LPSC's findings.

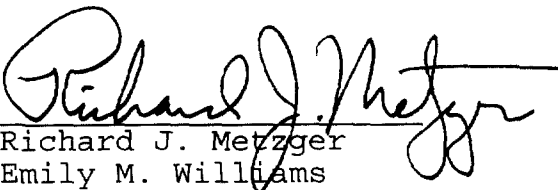
¹¹ Specifically, among other things the Louisiana Commission did not address is the fact the LENS system does not give CLECs the same information on customers that BellSouth employees obtain, or the fact that LENS cannot be used when ordering more than six lines, or when changing a service in any way. Cf. Consideration of BellSouth Telecommunications, Inc.'s entry into interLATA services pursuant to Section 271 of the Federal Telecommunications Act of 1996, Docket No. 960786-TL, Order No. PSC-97-1459-FOF-TL, issued November 19, 1997, at 173-76.

Another telling example of the LPSC's unwillingness to substantively address any concerns about BellSouth's application is the issue of reciprocal compensation for ISP traffic. Although the issue was presented to the LPSC, and although nine states have individually ordered the ILECs to pay reciprocal compensation on this traffic, the issue received no mention whatsoever in the LPSC's conclusions.

CONCLUSION

For the foregoing reasons, ALTS requests that BellSouth's Application for in-Region interLATA authority in Louisiana be denied.

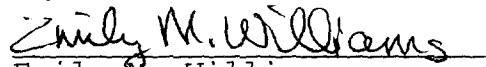
Respectfully submitted,

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December 19, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of December, 1997, copies of the foregoing Reply Comments of the Association for Local Telecommunications Services were served via first class mail, postage prepaid, or by hand as indicated to the parties listed below.


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